STATEMENT OF
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BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE & MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO

H.R. 67, The Veterans Outreach Improvement Act of 2007;
H.R. 1435, The Department of Veterans Affairs Claims Backlog Reduction Act of 2007;
H.R. 1444, To direct the Secretary of Veterans Affairs to make interim benefit payments under certain remanded claims;
H.R. 1490, To provide for a presumption of service-connectedness for certain claims for benefits under the laws administered by the Secretary of Veterans Affairs

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MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the 2.4 million members of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to present our views on the following legislation.

The first bill under discussion today is **H.R. 67, The Veterans Outreach Improvement Act of 2007.** This bill aims to improve outreach activities within the Department of Veterans Affairs (VA) by coordinating the efforts among the offices of the Secretary, Public Affairs, Veterans Health Administration, Veterans Benefits Administration and the National Cemetery Administration.

In order to increase effectiveness of VA outreach, it directs the Secretary to establish a grant program for state veteran agencies by providing $25 million in funding annually for three years for state and local outreach services available to veterans. It targets assistance to those locations with large and growing veteran populations.

The VFW has always encouraged and supported increased awareness of benefits and services provided by VA to veterans. We believe that *all* veterans and their survivors should have access to up-to-date information about services and benefits for which they may be eligible, therefore we support H.R. 67. However, since success of this initiative will result in increased claims submissions to VA, we urge that funding for VBA adjudication keep pace with increases in the number of claims filed as a result of greater outreach at the local level. We also encourage that substantial outreach at the local and state level be made on behalf of National Guard and Reserve members and would like to see additional language which specifies oversight by Congress regarding use of funds granted to state and local

governments who perform outreach services, to ensure that these funds are being spent properly. Finally, we urge Congress to fund this initiative with new money since it otherwise would result in a reduction of existing services or programs.

The VFW strongly opposes **H.R. 1435, The Department of Veterans Affairs Claims Reduction Act of 2007,** a bill that directs the Secretary to conduct a pilot program intended to reduce the backlog of claims for benefits pending with VA. We believe that there are serious flaws in the legislation's approach, as well as unclear legal parameters concerning representation of a claimant by County Veterans Service Officers (CVSOs).

In Section 2, the bill states that there are 2,400 full time and numerous part-time employees in the nationwide system of CVSOs of which a majority of them are accredited (accreditation is necessary for access to information concerning veterans contained in VA record systems). However, Section 3, subsection 2, defines a CVSO as "any person employed or funded by any county, parish, borough, or territory whose job it is to assist veterans and eligible dependents in the application for, administration of, or receipt of benefits under any Federal, State or county veterans benefit program." This would allow anyone, accredited or not, access to a veteran's highly sensitive and personal information without any safeguards or controls.

The bill also redefines "claim" in Section 3, subsections 3, 4 & 5 without regard or reference to long established laws, regulations or judicial decisions. This will certainly cause difficulties for VA regulation writers and significant confusion within the veteran and legal communities resulting in increased appeals and litigation. It also redefines "presumptive claim" to create a whole new category of presumptive disabilities.

This redefinition of terms shows the inherent flaw in the legislation. It is written without a clear understanding of existing law. For example, an *"injury or illness claim"* is defined as a *"claim for benefits that is documented as being service connected"*. What exactly does that mean? An original claim filed for service connection? Does it mean a claim for an increased evaluation of a condition already service connected? The terms "claim", "service connection", "presumption" and others found throughout this legislation are clearly defined in existing law and regulation. This bill fails to suggest a reason why changes are necessary.

This "rewriting of terms" will force VA to alter its claims-tracking program to conform to the new definitions and then determine which cases are not ready to rate. This legislation requires VA to screen its entire backlog to determine what additional evidence is still needed, then prepare a transmittal document describing the required development before sending it to a CVSO. This is exactly the same review process that VA currently does to decide what evidence is needed in order to prepare a development letter under the *Veterans Claims Assistance Act*. Instead of preparing that letter to the claimant, this bill would require the preparation of a transmittal or instruction letter to the CVSO who would, weeks later, attempt to contact the claimant by phone or letter seeking the same information. The workload for VA would increase, not be reduced. And the development of the claim would be significantly extended while the claim goes through additional hand-offs before the veteran is contacted.

We also question Section 4, subsection 1, "referral of claims to CVSOs" and the validity of distributing claims to those officers who are "geographically closest to the claimant." What about the organization

which holds the Power of Attorney? Who decides where the claim is referred and when the claim is shifted from VA to CVSOs? Who will track the workload? Further, since this bill would allow CVSOs to not only take new claims but also keep them until they are fully "ready to rate", VA won't even know that it has that pending work in the pipeline. This legislation would increase the workload tracking burden on VA and hide significant portions of the backlog from view which will, over time, give the appearance of workload reduction at VA when, in fact, the work has merely been shifted elsewhere. It offers VA managers a new excuse for poor timeliness.

Since VA doesn't tell the CVSOs what to develop in claims it has never reviewed, can anyone be certain that the claims they take will be ready to rate when VA receives them?

Section 4, subsection 5 states that CVSOs are supposed to fully develop claims. Does that include developing Service Medical Records, Military Personnel Records, VA exams or expert medical opinions? Do they submit requests to DOD to verify stressors in claims for service connection of PTSD?

The net effect is that VA will still have to screen claims exactly as it does now under the "Duty to Assist" law when it instructs the CVSOs what to do.

Finally, and not the least important, the money for this program will come out of VA's budget, reducing the number of FTE available to develop and process claims, thereby *aggravating***,** not solving the problem of the backlog. The VFW believes the only way to truly solve the current situation is to provide appropriate funding and the resources to enable VBA to hire more qualified employees who can reduce waiting times, improve error rates and set and meet goals. The current claims processing system can work, if Congress dedicates the proper level of resources, and if this body uses its oversight power to ensure that VA is living up to its obligations.

The VFW opposes **H.R. 1444, legislation to direct the Secretary of Veterans Affairs to make interim benefits payments under certain remanded claims.** The proposed legislation requires VA to pay an interim benefit of $500 per month when a claim for veterans' benefits is remanded by either the U.S. Court of Appeals for Veterans Claims or the Board of Veterans' Appeals (BVA), and when a decision is not made within 180 days of the date of the remand.

The VFW recognizes that this bill is intended to offer interim relief to those veterans who have waited extraordinarily long periods for a final decision on their claims. However, when the Appeals Management Center of the VBA grants entitlement to service connection or increased benefits in only 17 percent of the remands it works, we wonder why Congress would choose to award an interim benefit of $500 per month to 100 percent of those waiting over 180 days for a decision. Further, this bill would only serve to increase the backlog and prolong the time it takes to get a case rated properly because it will require additional time to adjust the award following completion of the remand.

We also believe that it will lead to a higher remand rate inherently corrupting and further complicating the current claims process. For the month of March 2007 alone, the total number of cases in remand status was 16,577. Generally, the average remanded case remains undecided – without a final decision by the BVA - for about two years. It should be noted that in the first five months of the current Fiscal Year (FY 2007) the Board rendered 18,500 decisions, of which 20% were granted, 42% were denied and 34% were remanded back to the Appeals Management Center or Regional Office.

The development and adjudication of a veterans' claim under the VBA system is more than just awarding compensation for an injury or illness incurred while in service, it is designed to make an individual socially and economically whole. In the end we believe that resources would be better spent at the beginning of the claims process, by hiring and training more claims adjudicators thereby ensuring the veteran a fair and accurate assessment of their needs.

The VFW also opposes the final bill under consideration today. **H.R. 1490 would provide for a presumption of service-connectedness for certain claims for benefits under the laws administered by the Secretary of Veterans Affairs.**

We believe that this legislation is based on a false premise: that 87 percent of the claims submitted by veterans are approved by VA.[1] VA compensation is unlike any other program administered by any agency or department in the Federal government. Entitlement to Social Security Disability payments requires simply a determination as to whether the claimant is unable to work due to disability. It is a yes or no decision. Entitlement to workers compensation is slightly more complicated in that it must be determined that the disability making someone unemployable is related to or caused by his or her job.

A determination of entitlement to veterans' disability compensation, on the other hand, requires first a decision that the disability either arose coincident with service or, if it preexisted service, was aggravated during service beyond natural progress. Decisions by the Court of Appeals for Veterans Claims allows the grant of service connection for non-service connected disabilities which have been aggravated by service connected disabilities. So the first decision is whether a disability is service connected. The next question is how disabling is it. By law, evaluations are assigned in gradations of 10 percent from zero to 100 percent. Finally, VA must decide the effective date from which benefits can be paid.

While it appears to be true that 87 percent of recently discharged veterans are granted service connection for one or more disabilities, what is categorically untrue is that 87 percent of veterans "claims" are approved. Original claims for compensation almost always allege that more than one disability is related to service. Currently the average number of disabilities claimed is 8 or 9 and it is not uncommon for new veterans to claim 20 or more conditions. However, these claimed conditions are a mixture of actually diagnosed disabilities and symptoms, which may or may not be related to diagnosed disabilities. Many of these "disabilities" are symptoms, such as pain, which are related to a real disability. Further, many claimed conditions are either acute problems, like colds or sprained ankles, which resolved in service and are no longer symptomatic at the time the claim is filed or are disabilities which have not been diagnosed and, on examination, remain undiagnosed.

While 87 percent of veterans receive service connection for some claimed condition, the evaluations assigned may be zero percent disabling or 10 or 20 percent. In 2005, VA found 160,352 veterans entitled to service connection. However, fully 49 percent were awarded **combined** compensation

[1] Soldiers Returning from Iraq and Afghanistan: The Long-term Costs of Providing Veterans Medical Care and Disability Benefits; Bilmes, Linda, Faculty Research Working Papers Series, January, 2007

awards of 20 percent or less.[2] We believe that this bill, if enacted into law, would bastardize a program designed to compensate veterans for service connected disabilities and encourage veterans to file increasing, spurious and sometimes fraudulent claims.

While the intent of this legislation is admirable we believe that it forces VA into an adversarial relationship with the veteran filing for a service-connected disability claim.
It asks the VA to validate all claims simply by "proof of service in a conflict" and awards those claimants at a *median level* until "such time as the appropriate level of benefits is determined." There is no definition given for what the median level is based upon. What about claims that cover multiple injuries or illnesses?

The legislation fails to address the complexity of the VBA ratings system and in fact would seem to create a duplication of effort in adjudicating claims during a time when VA is experiencing record backlogs.

It also calls for an audit of a percentage of claims, to "*uncover and deter fraudulent claims.*" This could prove to be substantial, if in fact the award is based solely upon "proof of conflict." Again, this would require additional workload for adjudicators to weed out the good from the bad. Wouldn't resources be better utilized in adjudicating claims on the front end so that all veteran's claims are processed correctly the first time?

The bill also takes under consideration only those veterans filing new claims or claims pending at the time the law takes effect. What about those veterans who have been denied and/or await a decision on an appeal? The VFW believes that there is a danger of creating a two-tiered system of veterans.

The last section reassigns employees who previously worked on claims processing to Vet Centers to assist veterans with readjustment counseling and mental health services or to other locations deemed necessary by the Secretary. Those individuals who processed claims may not necessarily be qualified to assist veterans with readjustment or mental health counseling. VA employees who are asked to undertake this task will have to be trained which takes time not to mention takes them away from adjudicating any new claims already in the system.

The authors of this bill are clearly concerned with the extended period of time that it takes VA to resolve compensation claims and the effect that delayed decision making may have on new veterans transitioning, with disabilities, from active duty to civilian life. Congress may wish to consider enacting a temporary benefit stretching for up to two years after discharge to ease the transition for all new veterans. A transition program, rather than this bill, would be simpler to administer and would leave the VA compensation program intact to help replace lost earnings and address quality of life issues caused by service connected disabilities.

We attest that although the system is not perfect, when it is consistently funded on time and provided adequate staffing levels, with strong leadership by VA and oversight by Congress, it works. VFW believes that there is no more deserving population of beneficiaries of a strong VA system than the current generation of veterans, who are returning from Iraq, Afghanistan and elsewhere in the Global War on Terrorism.

[2] Annual Benefits Report, Fiscal Year 2005; Veterans Benefits Administration; September 2006

Mr. Chairman and members of the subcommittee, this concludes the VFW's testimony, I would be happy to answer any questions you may have. Thank you